

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF TEXAS  
3 AUSTIN DIVISION

3 UPH HOLDINGS, INC., ET AL ) Docket No. A 13-CA-748 SS  
4 ) A 13-CA-766 SS  
5 ) A 13-CA-847 SS  
6 vs. ) Austin, Texas  
7 )  
8 LEAP WIRELESS INTERNATIONAL, )  
9 INC., CRICKET COMMUNICATIONS, )  
10 INC., ET AL ) October 18, 2013

8 TRANSCRIPT OF ORAL ARGUMENTS  
9 BEFORE THE HONORABLE SAM SPARKS

10  
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1   **(Appearances Continued:)**

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25   Proceedings reported by computerized stenography, transcript  
produced by computer.

14:15:15 1 THE COURT: All right. I've got 13-CA-748, 13-CA-766,  
14:15:22 2 13-CA-847, UPH Holdings against whoever was in the telephone  
14:15:32 3 book.

14:15:40 4 MS. TOMASCO: Your Honor, Patty Tomasco and with me is  
14:15:42 5 Jennifer Wertz on behalf of UPH Holdings with respect to the  
14:15:46 6 Leap, Cricket and T-Mobile adversary proceedings.

14:15:54 7 MR. DESHAZO: Your Honor, Scott DeShazo on behalf of  
14:15:57 8 the plaintiffs in the 778 case. Mr. Swan is the guy that  
14:16:01 9 couldn't make it down for the --

14:16:02 10 THE COURT: I think I either had one or two call in. I  
14:16:08 11 thought one from the west coast, one from the east coast, and I  
14:16:10 12 told both of them the same thing: I only had one line, but if  
14:16:14 13 they'd make arrangements. But then, one of them talked with my  
14:16:18 14 law clerk, and then, he decided he didn't need to be here.

14:16:22 15 MR. DESHAZO: That's the one I'm on.

14:16:23 16 THE COURT: Okay. I've got another one that was  
14:16:25 17 supposed to call in from the east coast. Who is that?

14:16:29 18 MS. HOPPER: Your Honor, this is Pamela Hopper.

14:16:30 19 I am here for Sprint Communications and you're speaking  
14:16:32 20 about David Swan. He sent me a message, just a moment ago,  
14:16:37 21 saying he's been trying to get into the courtroom for about ten  
14:16:39 22 minutes and hasn't had any luck. I've asked him to try again.  
14:16:43 23 I'm not sure.

14:16:51 24 THE COURT: All right. I wish people couldn't get into  
14:16:54 25 the room -- to the court. All right.

14:16:58 1 MR. TAUBE: Your Honor, good afternoon. Eric Taube on  
14:17:00 2 behalf of Leap Wireless International and Cricket Communications,  
14:17:04 3 Inc. And, your Honor, if I could, I'd like to introduce to the  
14:17:06 4 Court Suzanne Toller with the Davis Wright firm out of San  
14:17:10 5 Francisco. Ms. Toller has a motion pro hac vice pending, your  
14:17:13 6 Honor. It was filed earlier this week.

14:17:14 7 THE COURT: Okay. Well, if I haven't signed it, I will  
14:17:16 8 sign it.

14:17:18 9 MR. TAUBE: Thank you.

14:17:19 10 MR. SUGDEN: Your Honor, Will Sugden with Alston & Bird  
14:17:22 11 on behalf of T-Mobile. I have filed a pro hac motion in the  
14:17:26 12 underlying adversary proceeding in bankruptcy court. I've not  
14:17:30 13 filed one in this case. My associate contacted your clerk and  
14:17:34 14 said that that will be acceptable. So I have not filed a pro hac  
14:17:39 15 motion in this court, but I'd be happy to.

14:17:41 16 THE COURT: You probably ought to. But the fact that  
14:17:46 17 you have an associate who's a member of the court is a green  
14:17:51 18 light.

14:17:52 19 MR. SUGDEN: Okay. We will get that on file on Monday.  
14:17:54 20 Thank you very much, your Honor.

14:17:55 21 THE COURT: You're welcome.

14:18:01 22 Okay. I have an agreed motion for extension of time to  
14:18:06 23 file a brief, a joint motion that the whole thing has been fully  
14:18:13 24 briefed, and then, motion for leave to exceed the page limits,  
14:18:20 25 and a motion to appear pro hac vice. But the main thing I have

14:18:26 1 is that y'all want me to pull this out of bankruptcy.

14:18:34 2 I'm setting right now for October of 2015. That's the  
14:18:40 3 next trial date I have. I filled up September this morning on  
14:18:45 4 people that could reach us by phone. So that will give you an  
14:18:53 5 idea of what is going on. I really invited you here for you to  
14:19:00 6 give me kind of a bird's-eye view of this. It appears that the  
14:19:04 7 issue is pretty much the same in all of these cases. I tried to  
14:19:12 8 do some reading. Makes little sense. This issue was presented  
14:19:17 9 to the California PUC twice. They rejected it because there was  
14:19:28 10 some case in Washington, and they thought the Feds would  
14:19:34 11 determine it. Then nobody seems to determine it.

14:19:44 12 So why in the world wouldn't I make y'all go to the  
14:19:48 13 Texas PUC?

14:19:49 14 MS. TOMASCO: Your Honor, the Texas --

14:19:50 15 THE COURT: At least they'll determine it.

14:19:52 16 MS. TOMASCO: Your Honor, the Texas PUC will not --  
14:19:55 17 will not -- would not take jurisdiction over this. They don't  
14:19:57 18 have the jurisdiction over this particular issue.

14:20:00 19 If I could, I could explain further where we are with  
14:20:02 20 the bankruptcy and --

14:20:04 21 THE COURT: I'm not worried about the bankruptcy. I'll  
14:20:07 22 apply the law. You can make that argument when -- you just tell  
14:20:10 23 me what y'all are looking for.

14:20:12 24 You're looking for if there is a charge, and if there  
14:20:15 25 is a charge, how much is the charge for one outfit who's

14:20:23 1 terminating a call who doesn't have a contract with the original  
14:20:26 2 call, as I understand it.

14:20:27 3 MS. TOMASCO: I could hand up a chart, your Honor.

14:20:28 4 THE COURT: Sure. You might hand one to the more  
14:20:36 5 important person right here.

14:20:46 6 MS. TOMASCO: Your Honor, we've attempted to simplify  
14:20:48 7 the issues that are at stake.

14:20:53 8 THE COURT: Do you have another chart?

14:20:55 9 MS. TOMASCO: Well, it's just one chart and it will  
14:20:58 10 show there are two types of traffic at issue, both of which are  
14:21:02 11 being sought in the complaints filed by this debtor. The debtors  
14:21:06 12 consist of eight interrelated corporations that filed bankruptcy  
14:21:09 13 on March 28th of 2013, in large part, due to the nonpayment by  
14:21:14 14 defendants of significant wireless to the network of the  
14:21:22 15 plaintiffs.

14:21:22 16 THE COURT: So if it was filed to the bankruptcy, why  
14:21:26 17 wouldn't this be a core proceeding?

14:21:28 18 MS. TOMASCO: Well, there's significant debate about  
14:21:31 19 whether or not this is a core proceeding. With respect to  
14:21:33 20 Sprint, with whom Mr. DeShazo represents, they filed the proof of  
14:21:36 21 claim. There's a good argument that Sprint's proof of claim  
14:21:40 22 causes this all to be a core proceeding because the proof of  
14:21:44 23 claim submits yourself to the jurisdiction of the bankruptcy  
14:21:47 24 court, and it all becomes part of the resolution of the  
14:21:51 25 debtor-creditor relationship.

14:21:53 1 With respect to T-Mobile and I'm going to call them  
14:21:55 2 Leap, L-E-A-P, or Cricket, they did not file proofs of claim.  
14:22:00 3 And so, we're talking about a classic augment the estate,  
14:22:04 4 related-to proceeding. The only way it becomes core is if you  
14:22:09 5 believe that 542 gives us core jurisdiction to augment the  
14:22:15 6 estate.

14:22:15 7 Now, 542 is the turnover provision that provides for if  
14:22:19 8 you own -- if you owe a liquidated debt to the estate and you  
14:22:23 9 fail to turn it over, it's essentially you have to turn it over,  
14:22:26 10 give it up. When it becomes more controverted, the cases kind of  
14:22:31 11 vary as to whether or not that is a core proceeding; and so,  
14:22:34 12 there may be a large room for argument that with respect to  
14:22:38 13 simply augmenting the estate, you get into the classic In Re:  
14:22:41 14 Wood, you know, line of cases that led to -- that led to the  
14:22:48 15 marathon reforms in the early 1990s.

14:22:54 16 THE COURT: I find that -- I never can find agreement  
14:23:00 17 between bankruptcy lawyers as what is a core. What is -- in the  
14:23:05 18 Fisher case, what is the phrase?

14:23:08 19 LAW CLERK: Critical mass.

14:23:09 20 THE COURT: Critical mass. The Supreme Court in the  
14:23:14 21 Michigan Grutter case created the term "critical mass," and I  
14:23:23 22 asked all of the lawyers on both sides -- and they had plenty of  
14:23:27 23 lawyers, actually more than y'all have -- and nobody could define  
14:23:31 24 the word "critical mass." So we had to define it --

14:23:31 25 MS. TOMASCO: Well --

14:23:37 1 THE COURT: No. I'm an old man, it's been a long day,  
14:23:39 2 so you have to listen for a minute.

14:23:41 3 MS. TOMASCO: So what I would say with respect to that,  
14:23:44 4 your Honor, if you look at the chart that we've prepared after --  
14:23:48 5 and this is --

14:23:49 6 THE COURT: Well, part of the statute doesn't care if  
14:23:51 7 it's core or not. Part of the statute says if it's the federal,  
14:23:57 8 an Article III judge has to do it.

14:24:00 9 MS. TOMASCO: There's no argument but that we have  
14:24:02 10 related-to jurisdiction. So the venue is proper here because the  
14:24:07 11 bankruptcies are here. The question is whether or not it's core.  
14:24:11 12 And I would submit to you, even if it's not core, you don't have  
14:24:15 13 to withdraw the reference. The only reason why you would need to  
14:24:19 14 withdraw the reference is if they were able to -- there's the  
14:24:25 15 power issue in Stern vs. Marshall whether or not a bankruptcy  
14:24:28 16 court can enter a final order. If it's not core, the bankruptcy  
14:24:31 17 court does not have that power.

14:24:34 18 If --

14:24:36 19 THE COURT: That's what we think right now.

14:24:37 20 MS. TOMASCO: That's what we think right now. Whether  
14:24:39 21 you agree with the Supreme Court or not, that's the law as it  
14:24:42 22 stands right now.

14:24:43 23 So what I'm here to say is, let's be efficient. I have  
14:24:48 24 got 140 of these to file. And I've got -- and part of this is --

14:24:56 25 THE COURT: In Re: Crescent, I have over 400 cases.



14:25:02 1 They're just going to have to --

14:25:03 2 MS. TOMASCO: They're just going to have to wait. And  
14:25:05 3 my suggestion to the parties and my suggestion to the Court is I  
14:25:11 4 would argue that with respect to intraMTA, the law is not in  
14:25:17 5 flux. We know what the law is. There is just a big gaping hole  
14:25:19 6 in this particular time period as to what the rate is. And we've  
14:25:23 7 cited to you cases that it's just quantum meruit, you don't get  
14:25:27 8 it for free.

14:25:28 9 None of the regulators have set a rate, and they have  
14:25:31 10 no reason to because now we've gone to bill-and-keep. They would  
14:25:33 11 be engaging in retroactive rate-making during this time period.  
14:25:38 12 Nobody's going to do it. They're just not. They don't have any  
14:25:41 13 interest nor are you -- nor are you implicating any regulatory  
14:25:45 14 foresight on their part because they've already decided this is a  
14:25:48 15 dead time period. This is a huge black hole. This period right  
14:25:52 16 here.

14:25:52 17 There is no issue here. Tariff applies, tariff  
14:25:57 18 applies, tariff applies on interMTA. That's the long distance  
14:26:01 19 wireless to the CLEC traffic.

14:26:03 20 THE COURT: Well, aren't those tariffs computed in a --

14:26:08 21 MS. TOMASCO: No. The tariffs are filed by the CLEC,  
14:26:11 22 the competitive local exchange carrier. They set the rate. They  
14:26:14 23 set the terms. They are like a contract. It's like when I get  
14:26:17 24 on the toll way to drive down to San Antonio and I get on 130, I  
14:26:21 25 don't sign a contract when I get on there, but when they send me

14:26:25 1 a bill based on my license plate, I've got to pay it. Same thing  
14:26:28 2 with this tariff. It's --

14:26:30 3 THE COURT: Well, but they set -- somebody sets the  
14:26:32 4 amount.

14:26:33 5 MS. TOMASCO: Well, the tariffs are subject to being  
14:26:38 6 overturned if they don't comply with the FCC regulations. But  
14:26:42 7 that's not what they're arguing here. They're arguing that,  
14:26:46 8 look, Judge, this is going to require interpretation. The  
14:26:51 9 district courts are the only courts that get to interpret tariffs  
14:26:56 10 in contracts. Only if you say that the tariff doesn't comply  
14:26:59 11 with regulations do you go to the FCC.

14:27:03 12 THE COURT: The circuit courts also get to do it.

14:27:07 13 MS. TOMASCO: Yes.

14:27:13 14 And so, what we're faced with here is not the state of  
14:27:16 15 federal law that is in flux. We know what the law is. We need  
14:27:19 16 to apply the law to the facts. How much of the traffic is  
14:27:22 17 intraMTA, how much of the traffic is interMTA. And this little  
14:27:29 18 space right here, this continuum in time, what's the appropriate  
14:27:33 19 rate? And it's --

14:27:34 20 THE COURT: And you're telling me that there's no  
14:27:37 21 dispute as to what that tariff is.

14:27:41 22 MS. TOMASCO: This is not a tariff rate. This is no  
14:27:44 23 tariff, but the rule says reasonable compensation. There's also  
14:27:47 24 a whole line of cases that say where you have no valid tariffs --  
14:27:53 25 if this tariff is invalid or you have no valid tariff, then the

14:27:57 1 Court also apply quantum meruit. Pure state law. So.

14:28:01 2 THE COURT: So what is it?

14:28:03 3 MS. TOMASCO: What is the appropriate rate?

14:28:04 4 THE COURT: Yes.

14:28:05 5 MS. TOMASCO: Well, it's going to be based on the  
14:28:07 6 incremental cost of services or what you would apply if you were  
14:28:10 7 applying state law quantum meruit.

14:28:12 8 THE COURT: And so, why doesn't the PUC determine that?

14:28:16 9 MS. TOMASCO: The PUC -- first of all, most of this  
14:28:19 10 traffic is in the west coast. This concerns the debtor Pac-West,  
14:28:23 11 which is a California corporation that was acquired by UniPoint  
14:28:27 12 Holdings, which is an Austin-based company. Most of this traffic  
14:28:30 13 is in California and Arizona, Utah, the western states. There is  
14:28:36 14 no traffic, to my knowledge, that's in -- that has been brought  
14:28:39 15 in this adversary proceeding that is Texas PUC.

14:28:44 16 Pac-West, which is the main plaintiff, is a California  
14:28:47 17 company that is in Chapter 11 in Austin, Texas. The California  
14:28:53 18 PUC said in the Pac-West case that you've reviewed, as well as in  
14:28:56 19 the North County litigation, they refuse. They refuse to set  
14:29:03 20 this rate.

14:29:04 21 Now, and I've also cited to you a whole line of cases  
14:29:07 22 that say where the regulators have failed to act and where we  
14:29:11 23 know they're not going to act -- the California PUC says we're  
14:29:14 24 not going to act, and yet, I represent the constituencies and the  
14:29:19 25 bankruptcies of eight companies, all of the creditors of which

14:29:24 1 have not gotten paid because these guys figured out that there  
14:29:30 2 was this loophole. They kept sending traffic, kept getting  
14:29:34 3 invoices and never pay them. Even though they know some of this  
14:29:38 4 is valid interMTA traffic, their own safe harbor filings put the  
14:29:43 5 number somewhere between 15 and 39.5 percent that falls into this  
14:29:47 6 category. So we know that 15 to 35 percent is tariff that  
14:29:52 7 there's no controversy. There's no hole. There's no black hole  
14:29:55 8 here.

14:29:56 9           The balance of the traffic intraMTA where you have the  
14:30:00 10 hole as to what the rate is, the cases all say, even if the  
14:30:04 11 tariff failed, even if it was subject to a tariff but, for  
14:30:08 12 whatever reason, the tariff was invalid, you apply quantum  
14:30:11 13 meruit. What's the cost to the bankrupt debtors to provide this  
14:30:15 14 service?

14:30:16 15           So what we're here today on, your Honor, is how do we  
14:30:21 16 efficiently handle these cases? The bankruptcy --

14:30:27 17           THE COURT: Well, let me ask you a question. What  
14:30:30 18 we're here today on is because you filed the bankruptcies here.  
14:30:34 19 But you're telling me that most of this activity is in California  
14:30:38 20 where they've refused to make these decisions.

14:30:40 21           MS. TOMASCO: Correct.

14:30:41 22           THE COURT: So you've come to the heaviest civil docket  
14:30:44 23 in the country that's supposed to have five district judges and  
14:30:49 24 we have two, and you want us to determine it.

14:30:55 25           MS. TOMASCO: Your Honor, my --

14:30:56 1 THE COURT: When California won't.

14:30:58 2 MS. TOMASCO: California won't determine it. We filed  
14:30:59 3 the bankruptcy in Austin. Our position is that withdrawal of the  
14:31:03 4 reference to this court that is very busy is inappropriate and  
14:31:08 5 premature. And the Court has discretion to delay withdrawal of  
14:31:12 6 the reference, for any reason it sees fit, in its discretion to  
14:31:15 7 leave it with the bankruptcy court. When we get to the point  
14:31:18 8 where we're going to have a trial, then we can discuss whether or  
14:31:22 9 not the bankruptcy court has the power to enter final findings or  
14:31:26 10 whether it needs to make a report and recommendation and come to  
14:31:28 11 this court with that.

14:31:30 12 THE COURT: What is -- your definition of trial is a  
14:31:33 13 quantum meruit amount?

14:31:36 14 MS. TOMASCO: If we go through all the pretrial and  
14:31:38 15 we're unable to resolve it through dispositive motions, of  
14:31:43 16 course, which the Court --

14:31:45 17 THE COURT: But the ultimate is just to get an amount.

14:31:47 18 MS. TOMASCO: To get an amount that they owe. They  
14:31:49 19 know they owe something. The question is how much.

14:31:52 20 And so, my suggestion is, your Honor, we've run 60  
14:31:58 21 preference cases through this court efficiently. We have 140  
14:32:02 22 cases to file in this bankruptcy. We can do it efficiently in  
14:32:07 23 the bankruptcy court, withdrawing the reference to this court's  
14:32:11 24 already crowded docket as premature, not necessary. The Court  
14:32:15 25 has absolute discretion to relay whether you think that it's a

1 federal issue or whether it's core or noncore, just like you can  
2 do with a magistrate.

3 We know you have jurisdiction. The question is, should  
4 you withdraw the reference now, or should we be allowed to  
5 proceed in bankruptcy court where we know we can do it  
6 efficiently?

7 THE COURT: So what would you be doing if in the  
8 bankruptcy -- my bankruptcy courts are very busy, too.

9 MS. TOMASCO: My experience, your Honor, where I  
10 practice there every day that there is enough time we can get to  
11 trial. I mean, if we had to have a hearing, even a contested  
12 hearing, the bankruptcy courts are not setting us in 2015.  
13 They're setting us in two weeks. So I don't think that we have  
14 the same issue --

15 THE COURT: I don't think they're going to set this one  
16 in two weeks.

17 MS. TOMASCO: Not for trial. What I'm saying for those  
18 kinds of things, we have a trial -- I have three trials next week  
19 on causes of action that I filed in November. So if that gives  
20 you any idea of what we're talking about in terms of time, the  
21 bankruptcy courts certainly are not backed up the way this court  
22 is.

23 Your Honor, if -- we have books for you with cases and  
24 pleadings, if you would like them.

25 THE COURT: I just don't know when I'm going to be able

1 to get to them. But if they're germane to what we're doing, mark  
2 them and give them to the clerk.

3 MR. TAUBE: Your Honor, if I could be heard, Eric Taube  
4 on behalf of Leap Wireless and Cricket.

5 Your Honor, among the defendants who have all filed  
6 motions to withdraw the reference, we're going to try to make one  
7 argument for the Court and not be repetitive.

8 Your Honor, I do want Ms. Toller, if it's appropriate  
9 and the Court wants to ask questions relating to what counsel has  
10 represented to be straightforward issues, which they're clearly  
11 not in matters of straightforward, non-questionable  
12 interpretation of the telecom law, which we seriously debate --  
13 I'd be more than happy for Ms. Toller to address them. But we  
14 believe, your Honor, that this --

15 THE COURT: In addition to California refusing, the  
16 Feds won't comment on it? And what happened to the district  
17 court of Washington? It decided not to withdraw the reference  
18 but slowly?

19 MR. TAUBE: Your Honor, I think Ms. Toller can respond  
20 because she was part of that. The district court -- the only  
21 district court case that I've seen that involve these type of  
22 issues, which is the case that we had cited previously --

23 THE COURT: I don't know which case it is, Mr. Taube.  
24 All I know is the PUC in California referred to it and says it's  
25 going to take too much of our time and too much of our resources,

14:35:24 1 wait for it.

14:35:26 2 MR. TAUBE: Right. It's because, your Honor, it is a  
14:35:29 3 complicated issue of telecom law, which is why we believe under  
14:35:33 4 the clear direction --

14:35:34 5 THE COURT: That's all we have to do is find out what  
14:35:36 6 the cost is and have a quantum meruit determination.

14:35:39 7 MR. TAUBE: To be candid, your Honor, counsel is wrong  
14:35:41 8 and we debate that. Again, Ms. Toller can tell the Court along  
14:35:46 9 those issues.

14:35:46 10 MS. TOLLER: Good afternoon, your Honor.

14:35:48 11 Well, I was actually representing Cricket, as well, or  
14:35:53 12 Leap Wireless in the California PUC proceeding, which is where I  
14:35:56 13 do a lot of my practice, as well as before the FCC. And there  
14:35:59 14 were a few, I think, maybe overstatements about what the PUC was  
14:36:04 15 willing and not willing to do; and what they decided in the case  
14:36:06 16 before it, which Pac-West also filed complaints against Cricket,  
14:36:10 17 Sprint and T-Mobile in that case, as well, was to weigh in to get  
14:36:14 18 some further guidance at the federal level. They were waiting  
14:36:17 19 for two decisions --

14:36:18 20 THE COURT: Well, they dismissed it twice. And the  
14:36:19 21 second time they dismissed it, I looked at their findings, and  
14:36:25 22 they just said it takes -- it's going to take too much of our  
14:36:29 23 time and expense.

14:36:30 24 MS. TOLLER: So what they were particularly focused on  
14:36:32 25 in that moment was this issue that counsel for the plaintiffs was



1 mentioning before about what is the reasonable compensation rate.  
2 And as you are probably well aware, right, for a court to look at  
3 things like incremental costs, which is what plaintiff's counsel  
4 said would be one of the factors that would be used to determine  
5 what reasonable compensation is, that's a pretty involved  
6 process, requiring cost studies and experts and looking at what  
7 the underlying cost is of the network, and it's something that  
8 regulators do -- used to do in the old days fairly often. They  
9 don't do as much anymore.

10 And the reason that the CPUC wanted to wait is because  
11 the way that the FCC's decision in the North County vs. Metro PCS  
12 case had come out is they said, we would like California to  
13 establish the rate because we have this Rule 20.11 that says, you  
14 know, that the carriers have to pay reasonable compensation. But  
15 we can't really decide if the carriers in front of us -- in that  
16 case, also a CLEC and a wireless carrier -- have violated that  
17 rule unless we know first what the reasonable compensation rate  
18 is.

19 And in California, the commission said, well, we're not  
20 going to go through all the trouble of establishing a rate, only  
21 to potentially have the FCC decide that under this particular  
22 requirement, you know, a carrier does not have to, for example,  
23 pay if there is no agreement because that is also something that  
24 the FCC reserved --

25 THE COURT: Slow down.

14:37:55 1 MS. TOLLER: Sorry. That was also something that the  
14:37:57 2 FCC reserved the right to do was to make -- was to find that if  
14:38:03 3 in the absence of an agreement, no compensation would be due.

14:38:08 4 They were also -- the CPUC was also waiting for the  
14:38:11 5 D.C. Court of Appeals to come -- to rule on the appeal of that  
14:38:16 6 MetroPCS case. And the D.C. Circuit actually just affirmed the  
14:38:24 7 FCC's finding and said it was within the FCC's discretion to  
14:38:28 8 decide to punt it to the CPUC, to the state to determine the rate  
14:38:31 9 if it wanted to.

14:38:32 10 THE COURT: Well, it's normally what they do.

14:38:35 11 MS. TOLLER: Yeah. So what happened -- but, I mean,  
14:38:38 12 what's critical is the FCC -- it took the FCC a while, but in  
14:38:41 13 2011, they did act. They came up with a default proxy rate for  
14:38:46 14 local traffic, what counsel was calling intraMTA traffic, and  
14:38:50 15 they decided that that rate was bill-and-keep; and what that  
14:38:53 16 means is, really, that each carrier doesn't charge the other  
14:38:57 17 carrier anything.

14:38:58 18 What the FCC decided, instead, was that because both  
14:39:03 19 the carrier who originally makes the call and the carrier who  
14:39:07 20 receives a call benefit from being able to make that call. That  
14:39:12 21 each carrier should recover the costs of making those calls from  
14:39:17 22 their customers, not from each other.

14:39:19 23 THE COURT: So it's the receipt of the call rather than  
14:39:21 24 the termination of the call is the front --

14:39:26 25 MS. TOLLER: So, I mean, either way, the receiver or

14:39:27 1 the termination. I was using --

14:39:28 2 THE COURT: Well, you have to receive it to terminate.  
14:39:30 3 But you're talking about the last receiver.

14:39:32 4 MS. TOLLER: Yes. Right. And -- right. The  
14:39:36 5 originally intercarrier compensation was premised on the notion  
14:39:40 6 that the calling party, the person who originated the call and  
14:39:44 7 the carrier who originated the call, should pay for it because  
14:39:47 8 they started it. And so, all the costs were originally on the  
14:39:51 9 calling party.

14:39:52 10 Over time, the FCC and the economists have rethought  
14:39:55 11 that construct, and now they've decided the calling party and  
14:40:00 12 what they call the call-led party both benefit. And so, both the  
14:40:04 13 end-user customers on both sides benefit and the carriers also  
14:40:07 14 both benefit. And so, that's why the FCC decided in 2011 that it  
14:40:12 15 would be bill-and-keep. That carriers would no longer be able to  
14:40:15 16 charge each other for that traffic: they would, instead, have to  
14:40:19 17 recover it from their end users.

14:40:20 18 And in making that decision, they made a couple of  
14:40:23 19 findings, which are very interesting and potentially helpful in  
14:40:26 20 this case. First of all, they found that the cost of  
14:40:30 21 termination, the forward-looking incremental cost of termination  
14:40:33 22 is close to zero. And they also found that particularly for the  
14:40:37 23 competitive CLECs, who in this -- I think counsel called it the  
14:40:42 24 black hole or this interim time period where they didn't have a  
14:40:44 25 way of potentially -- there was no rate set in this time period.

1           The FCC also found that in that time period, because  
2 there was no pricing methodology, that the CLECs, the competitive  
3 LECs had no basis for reliance on such a methodology in their  
4 business model. And they went, also, to bill-and-keep because  
5 they were concerned about arbitrage. What's been happening a lot  
6 in the industry recently is some carriers have figured out that  
7 if they can generate a lot of traffic coming into their network  
8 by doing things like chat lines, or free conference calling  
9 services, or other things that drive a lot of incoming traffic,  
10 that that can cause access charges and other compensation --  
11 intercarrier compensation charges to be incurred.

12           And because of this, that's another respect that the  
13 FCC went to bill-and-keep because they found that there was a lot  
14 of this arbitrage -- a lot of arbitrage going on in the industry.

15           THE COURT: You're going to make my court reporter quit  
16 on me.

17           MS. TOLLER: My apologies. The court reporters at the  
18 PUC have my name and number on a target in front of them, too.

19           THE COURT: Well, but this one is really mean. Go  
20 ahead.

21           MS. TOLLER: So, I mean, so that's another reason. And  
22 we would have to sort of see further on, but that is sort of the  
23 traffic stimulation or traffic-pumping aspect of this. The FCC  
24 developed new rules relating to that in their 2011 decision, as  
25 well, that reformed the whole intercarrier compensation model.

14:42:25 1 So with all due respect to counsel for the plaintiffs,  
14:42:27 2 this is a really complicated area of the law. For the bankruptcy  
14:42:32 3 court to move forward and to consider these issues, they will  
14:42:35 4 clearly have to not just apply but interpret and analyze the  
14:42:40 5 Communications Act, FCC regulations, FCC decisions interpreting  
14:42:44 6 those regulations and decisions, and they'll have to do that not  
14:42:48 7 only for the local traffic but even for this part, this interMTA  
14:42:53 8 traffic down here, as well.

14:42:55 9 MR. TAUBE: Your Honor -- I'm sorry.

14:42:56 10 THE COURT: Why?

14:42:57 11 MS. TOLLER: Okay.

14:42:59 12 THE COURT: Why do they have to?

14:43:00 13 MS. TOLLER: Oh, why do they have to? All right. So  
14:43:03 14 the reason that that's --

14:43:03 15 THE COURT: It's a long -- I mean, it's going to make a  
14:43:05 16 difference -- it's going to be just one, they have a tariff? Is  
14:43:13 17 it based on time?

14:43:15 18 MS. TOLLER: So the tariff, there's a couple of  
14:43:17 19 complications with the tariff. First of all, for two of the  
14:43:21 20 three defendants who are -- yeah. Defendants that are here  
14:43:26 21 before you, Cricket and T-Mobile, we are sure wireless providers  
14:43:32 22 in this instance, okay? Spring is a long distance provider.  
14:43:34 23 Their case is a little bit different.

14:43:36 24 But for the pure wireless providers, one of the things  
14:43:39 25 that's interesting about this interMTA traffic is that for the

14:43:43 1 wireless carriers, we don't generally send our long distance --  
14:43:46 2 that's another name for this -- traffic to CLECs like Pac-West.  
14:43:52 3 We use long distance carriers to take that traffic for us. So we  
14:43:56 4 hand it off to long distance carriers. And the long distance  
14:43:58 5 carriers are the ones who have to pay these tariff charges to  
14:44:01 6 people like Pac-West.

14:44:04 7 And so, they've actually advanced a novel theory that I  
14:44:07 8 haven't seen someone advance before, which is that as the  
14:44:10 9 originating carrier, the wireless carrier, notwithstanding the  
14:44:13 10 fact that they send traffic over to this long distance carrier,  
14:44:18 11 that they still bear the responsibility for paying these tariff  
14:44:22 12 charges and that's unusual. I haven't seen that before.

14:44:25 13 THE COURT: Is there a passthrough?

14:44:27 14 MS. TOLLER: No. I mean, we pay the long distance  
14:44:31 15 carriers a charge per minute to take our traffic for us, but  
14:44:34 16 then, they bear the responsibility for paying the access charges.  
14:44:37 17 And I've never seen anyone before allege that the originating  
14:44:40 18 carrier bears that. And also, at least for my client's  
14:44:45 19 perspective, this interMTA is a tiny piece of it. The bulk of  
14:44:48 20 the traffic is up here.

14:44:49 21 And then, the other thing that you'll have to look at  
14:44:51 22 on the tariffs, as well, is whether the tariffs are valid and  
14:44:55 23 whether they actually apply to the traffic at issue. The way  
14:44:58 24 that at least the California tariffs are written, they are  
14:45:01 25 written to not even apply to wireless carriers at all. That's a

14:45:04 1 factor. And then, because of these arbitrage issues I was  
14:45:07 2 talking about before and traffic pumping, there's --

14:45:12 3 MS. TOMASCO: Your Honor, there's no evidence of  
14:45:13 4 traffic pumping.

14:45:14 5 THE COURT: Oh, we take turns here. I'll give you  
14:45:16 6 another turn.

14:45:16 7 MS. TOLLER: There's a whole body of case law, and this  
14:45:19 8 is referenced in the motions to dismiss that were filed and have  
14:45:22 9 been brought up to you. There's a whole level of analysis that  
14:45:26 10 needs to be done about whether, in fact, the traffic is  
14:45:29 11 terminating to an actual end user, and if it's not, you're not  
14:45:34 12 allowed to charge access charges for it. And so, that will be  
14:45:36 13 another complex federal law issue that this court will need to  
14:45:40 14 decide.

14:45:41 15 MR. TAUBE: And, your Honor, I think, if the Court will  
14:45:43 16 permit me, that's where the bankruptcy issue comes in, under 28  
14:45:48 17 U.S.C. 157(b). Because this court is going to have to deal with  
14:45:52 18 all of the issues that Ms. Toller just described, it is not -- I  
14:45:59 19 believe that the withdrawal of the reference is mandatory, not  
14:46:03 20 even permissible, because you're dealing with other federal law  
14:46:07 21 and issues that arise in connection with the bankruptcy case.

14:46:14 22 The case, your Honor, that has been cited, which is  
14:46:17 23 fairly identical you, United Access Telecom vs. Northern New  
14:46:23 24 England Telephone Operations case, district court presented with  
14:46:26 25 very similar issues and did exactly what we have asked this court

14:46:30 1 and what the other defendants have asked this court to do is to  
14:46:32 2 withdraw the reference, based upon the mandatory provision of 28  
14:46:35 3 U.S.C. 157. And, your Honor, there are plenty of reasons.

14:46:41 4 THE COURT: What did he do, or she?

14:46:44 5 MR. TAUBE: I'm sorry, your Honor?

14:46:46 6 THE COURT: You said there's another one that you've  
14:46:47 7 asked somebody to do the same thing.

14:46:49 8 MR. TAUBE: No, your Honor. In another case, in  
14:46:50 9 another district, that is exactly the same thing that happened,  
14:46:54 10 very similar circumstance.

14:46:55 11 THE COURT: Well, you're just saying that they made a  
14:46:57 12 determination they got to apply federal law and regulations.

14:47:00 13 MR. TAUBE: Yes, sir. That's correct.

14:47:02 14 THE COURT: So you want to turn me into a PUC is what  
14:47:06 15 you want to --

14:47:07 16 MR. TAUBE: Well, your Honor, we actually don't want  
14:47:07 17 the Court -- we actually move --

14:47:09 18 THE COURT: No, no. You don't want this ever  
14:47:11 19 determined. I understand. Your clients don't want to pay a  
14:47:13 20 dime.

14:47:14 21 MR. TAUBE: We want the complaint dismissed.

14:47:15 22 THE COURT: You don't want it determined. You just  
14:47:17 23 want to stretch it out. That's why she's wanting to go to  
14:47:20 24 bankruptcy to get this apparatus to -- just like a turnover. I  
14:47:26 25 wouldn't permit that, anyway, though, I can tell you that.



14:47:29 1 You've got to have to determine it, one way or the other, if  
14:47:33 2 there is, because nobody else apparently is very interested in  
14:47:38 3 it.

14:47:38 4 MR. TAUBE: I understand, your Honor.

14:47:39 5 THE COURT: So why should I be?

14:47:40 6 MR. TAUBE: Because I think, your Honor,  
14:47:42 7 jurisdictionally, you're the only court that can. Bankruptcy  
14:47:44 8 court doesn't -- well.

14:47:46 9 THE COURT: If California -- if this is a California  
14:47:49 10 problem, we don't have to take it. They can --

14:47:54 11 MR. TAUBE: Well, I don't mean it that way, your Honor.  
14:47:55 12 I meant between this court and the bankruptcy court, you are the  
14:47:59 13 only court that has jurisdiction to do it. So --

14:48:01 14 THE COURT: Now, I could have the bankruptcy court do  
14:48:03 15 anything. I could have them pretrial a case all the way to jury  
14:48:08 16 selection and do that. I'm doing it in Crescent right now. I  
14:48:15 17 can't handle another 200-and-some cases. And I'm consolidating  
14:48:21 18 other cases, and I'm telling them I don't really care. There are  
14:48:26 19 interlocutory orders you can't appeal, you'd better prepare for  
14:48:30 20 trial. There's a lot of things I can do.

14:48:34 21 MR. TAUBE: I understand, your Honor.

14:48:34 22 THE COURT: I'm not near as dumb as they say, you know.  
14:48:37 23 The truth of the matter is, it's -- from what little I've  
14:48:52 24 learned, it's a failing that nobody wants to take the time and  
14:48:54 25 expense to do it or to determine so that some appellate court can

14:48:59 1 determine whether it's going to be a charge or not.

14:49:08 2           Already, it seems to me, that looks like a case I could  
14:49:16 3 take a special master in and work it out in six, seven weeks.  
14:49:27 4 Y'all would be working full-time. But if we got to the PUC,  
14:49:30 5 that's the only way I can do it. There's just no way in the  
14:49:32 6 world I can try it.

14:49:34 7           MR. TAUBE: I understand, your Honor.

14:49:35 8           In terms of how the Court handles its docket, obviously  
14:49:38 9 that's clearly within the Court's discretion. I think for the  
14:49:40 10 jurisdictional standpoint that it is, unfortunately, in this  
14:49:44 11 court's -- in the avenue of this court's jurisdiction.

14:49:48 12           THE COURT: Well, I thought I learned from the master.  
14:49:51 13 Judge Nowlin has what is called a special docket. And there are  
14:49:59 14 a lot of other judges have special dockets. I try everything  
14:50:02 15 that comes in. But you all notice other judges have never tried  
14:50:10 16 a patents case.

14:50:11 17           MR. TAUBE: I understand, your Honor. And I'm  
14:50:12 18 certainly aware of Judge Nowlin's --

14:50:13 19           THE COURT: I don't -- I just have to think about it.  
14:50:17 20 I just don't know -- first off, I don't have the -- right now,  
14:50:25 21 today is the last day that we know we can operate,  
14:50:29 22 notwithstanding what you read about in the papers. We don't know  
14:50:35 23 how long we're going to be able to operate with the staffs we  
14:50:39 24 have.

14:50:40 25           Okay. Anything further from that side?

14:50:49 1 MR. SUGDEN: Your Honor, very briefly, Will Sugden,  
14:50:53 2 again, for T-Mobile.

14:50:53 3 I wanted to address the issue of remand with you, and  
14:50:57 4 this is the issue of remand to the bankruptcy court and the scope  
14:51:00 5 of the discretion on the remand.

14:51:04 6 THE COURT: Well, I haven't remanded. I haven't  
14:51:07 7 withdrawn yet.

14:51:09 8 MR. SUGDEN: Correct. And there was a suggestion made  
14:51:12 9 in the debtors' papers, in the plaintiff's papers that even if  
14:51:16 10 you found that this was a case that required withdrawal of the  
14:51:19 11 reference under the mandatory provisions, that you nonetheless  
14:51:23 12 remand it to the bankruptcy court for pretrial matters, and I  
14:51:26 13 wanted to address that point. It was -- Ms. Tomasco raised it  
14:51:31 14 briefly in her presentation.

14:51:33 15 We have done some looking on that. Again, this is a  
14:51:37 16 case that, in our view, falls within the mandatory withdrawal  
14:51:41 17 provisions rather than the permissible withdrawal provisions,  
14:51:44 18 giving the folks on this side of the room, in our view, an  
14:51:49 19 entitlement to come up to district court to be handled in  
14:51:53 20 accordance with your Honor's docket. We have looked for cases  
14:51:57 21 that remand to the bankruptcy court, cases that are found in it  
14:52:04 22 to require mandatory withdrawal of the reference.

14:52:07 23 The leading case, the only case that we've really been  
14:52:10 24 able to find that's on point is a case arising out of the Pan Am  
14:52:14 25 bankruptcy. The cite to it is 133 B.R. 700. What that was, I

1 just wanted to distinguish that from this case and show your  
2 Honor how very different it is and why we really do have an  
3 entitlement to be in district court.

4 What that was was a situation where the PBGC, Pension  
5 Benefit Guarantee Corporation, had filed claims under three  
6 terminated plans that were sponsored by Pan Am.

7 THE COURT: Counsel.

8 MR. SUGDEN: Yes.

9 THE COURT: I would never withdraw the reference. I  
10 would just tell the bankruptcy court to manage the case.

11 MR. SUGDEN: Understood.

12 THE COURT: That's what I've done since I've been on  
13 the bench.

14 MR. SUGDEN: Okay.

15 THE COURT: Because you're right, when I have the puppy  
16 in my hand, I have to potty-train.

17 MR. SUGDEN: Understood, your Honor.

18 Well, with that, I will conclude my remarks, unless  
19 your Honor has any questions.

20 THE COURT: No. I think it's probably a good  
21 conclusion.

22 MR. SUGDEN: Okay. Thank you.

23 MS. TOMASCO: Your Honor, I just want to make a couple  
24 of points. I have a bankruptcy estate to administer. I've got a  
25 couple of hundred creditors, I've got eight debtors. I've got to

1 get money to my unsecured creditors. If we do what the  
2 defendants want us to do, we're going to go away before they have  
3 to pay a dime, even though they know, I know, everybody in this  
4 room knows they need to pay us.

5 So the question is -- I'm reminded of capable of  
6 repetition, yet, evading review with respect to CLEC debtors such  
7 as my client, and that is that we are never going to get  
8 resolution of this regulatory black hole if we wait for the  
9 regulators to act. We know what the rules are. We know what the  
10 rules are. The rules are reasonable compensation. And there's  
11 no fewer than six cases in identical circumstances where there  
12 were regulatory holes that -- we cite them in our brief. The  
13 most prominent among those is the Manhattan Telecommunications  
14 case out of the Southern District of New York where they said,  
15 we've got to do something.

16 And here, you can see what they want, defer, deflect,  
17 ignore. We've been sending them invoices for eight years that  
18 they've ignored. Eight years, they've not paid a dime, even  
19 though they've been getting an invoice. Why? Because they know  
20 that nobody's going to enforce the law because they're always  
21 going to cite to this -- what they call regulatory uncertainty.  
22 Now we know it's a regulatory black hole.

23 Yes, the FCC has moved intraMTA traffic to  
24 bill-and-keep. We have a black hole in between the 2005 T-Mobile  
25 declaratory ruling and the Connect America decision where there's

14:55:11 1 no rate, there's nothing to be done.

14:55:14 2 THE COURT: What about the counsel's -- in their papers  
14:55:19 3 and they mention here that on the -- because any call that you  
14:55:28 4 accept and terminate, you made -- your client makes money that  
14:55:32 5 there shouldn't be any charge.

14:55:34 6 MS. TOMASCO: Well, our client does incur costs. Our  
14:55:37 7 client is in bankruptcy as a result of the practice -- in part,  
14:55:40 8 because of the practices of defendants. We have \$40 million in  
14:55:44 9 charges that are similar to these charges that we need to try to  
14:55:47 10 collect. And it's not -- if it were factually true that there's  
14:55:53 11 no incremental costs to terminating an intraMTA CMRS call, if  
14:55:59 12 that were true, then they could be -- they could prove that at  
14:56:03 13 trial. They could prove that there's no incremental costs.

14:56:05 14 THE COURT: No. My question is, what is your position  
14:56:07 15 with regard that they say somebody has made the determination? I  
14:56:12 16 don't know.

14:56:12 17 MS. TOMASCO: Nobody has made a determination. The FCC  
14:56:14 18 did not make that determination. The factually -- that's why  
14:56:17 19 they remanded it to the California PUC. You know what the  
14:56:19 20 California PUC said? The California PUC said, you want us to  
14:56:23 21 undertake extensive cost studies -- this is for everybody, not  
14:56:27 22 just one plaintiff, one defendant. This is everybody. Extensive  
14:56:30 23 cost studies with all these participants on what the rate should  
14:56:33 24 be, right?

14:56:34 25 And they said, no thank you, because you know why?

14:56:37 1 It's retrospective rate-making. Cannot possibly apply to the  
14:56:41 2 future because the future is bill-and-keep, right? We know that  
14:56:45 3 the technology has advanced. And yes, things have gotten less  
14:56:50 4 expensive to terminate calls as technology has advanced. That  
14:56:53 5 doesn't mean that during this time period on intraMTA -- and  
14:56:57 6 let's not forget, we have interMTA, which is, unquestionably,  
14:57:01 7 tariff, that we can deal with that on a contractual basis. It  
14:57:04 8 doesn't require interpretation of telecommunications law.

14:57:08 9 But on intraMTA, the cases that have addressed it --  
14:57:11 10 and I have a couple if you want me to point them out to you --  
14:57:15 11 they say if there is this regulatory vacuum and the regulators  
14:57:19 12 will not speak, district courts are perfectly capable of applying  
14:57:25 13 quantum meruit. If, for example, our tariff, as she suggests, is  
14:57:29 14 invalid, for whatever reason, the district court can and should  
14:57:33 15 apply quantum meruit.

14:57:35 16 THE COURT: Well, I'd be appointing -- let's just say I  
14:57:39 17 go along with you and I come out with the figures, I'll be --  
14:57:45 18 that figure is going to be utilized in California apparently.

14:57:50 19 MS. TOMASCO: No. It would only apply -- if California  
14:57:52 20 were to do a rate study and set a rate for California, it would  
14:57:57 21 be a proceeding in which you have all the CLECs and all the CMRS  
14:58:01 22 providers all participating.

14:58:03 23 THE COURT: No, no, no. Your company --

14:58:05 24 MS. TOMASCO: Okay.

14:58:05 25 THE COURT: -- would use it.

14:58:06 1 MS. TOMASCO: My company no longer exists. My company  
14:58:11 2 has been sold. My debtor has been sold. We are talking about  
14:58:14 3 the past. This has no prospective application whatsoever. This  
14:58:19 4 is just about the past in two respects: One, my company's no  
14:58:24 5 longer taking calls. All of our equipment has been sold to a  
14:58:27 6 purchaser pursuant to a 363 sale. Number two, we know as a  
14:58:31 7 result of the Connect America order that we are talking about  
14:58:35 8 only retrospective time periods because everything now is  
14:58:38 9 bill-and-keep.

14:58:40 10 THE COURT: Then a determination --

14:58:43 11 MS. TOMASCO: This is just --

14:58:43 12 THE COURT: -- of no damages would end your quest.

14:58:47 13 MS. TOMASCO: If factually they could prove that there  
14:58:50 14 were no damages, we incurred no costs in providing this  
14:58:54 15 service --

14:58:54 16 THE COURT: Actually, you would have to prove what  
14:58:56 17 damages there are. You would have the burden.

14:58:59 18 MS. TOMASCO: Correct. Yes. We could prove quantum  
14:59:01 19 meruit, unjust enrichment, all of the quasi contracts if, for  
14:59:05 20 whatever reason, there is not an applicable rate or tariff.

14:59:08 21 THE COURT: If you did that in a lawsuit, that was the  
14:59:10 22 lawsuit, you had a jury, you would just be determining, one, if  
14:59:21 23 there's a debt, if there is a debt, how much, just like any other  
14:59:24 24 lawsuit.

14:59:25 25 MS. TOMASCO: That's correct, your Honor.



14:59:26 1 THE COURT: And there's not anything that the FCC or  
14:59:33 2 the state rate people.

14:59:36 3 MS. TOMASCO: One of the reasons why we defer to  
14:59:39 4 regulators is because it has prospective effect. Particularly in  
14:59:43 5 this case, there is no prospective effect. We are talking just  
14:59:46 6 about how much they owe. That's it. The debtor is not  
14:59:51 7 continuing, and the regulatory black hole, that time period ended  
14:59:56 8 on December 29th, 2011.

15:00:01 9 THE COURT: Yes, ma'am.

15:00:03 10 MS. TOLLER: I think the one critical piece that  
15:00:07 11 counsel for the plaintiffs is leaving out, though, is to even  
15:00:09 12 look back to decide what compensation is owed for that past  
15:00:13 13 period, if any.

15:00:14 14 THE COURT: Juries do that every single day.

15:00:17 15 MS. TOLLER: Yeah. But we also need to decide and  
15:00:20 16 interpret the regulatory framework that is in place, and that, in  
15:00:24 17 fact, is not as clear as she would have it be. So --

15:00:27 18 THE COURT: Juries get instructions in every lawsuit on  
15:00:30 19 how to determine damages, every single day. If this is just a  
15:00:37 20 liability in the past that can be an asset to a bankrupt estate,  
15:00:45 21 I'm not so sure that this is near as complicated as y'all are  
15:00:48 22 making it.

15:00:50 23 MS. TOLLER: The one thing, your Honor, that the  
15:00:53 24 tariffs that they're relying on are very similar to a lot of  
15:00:56 25 tariffs that folks still have in place today. So whatever

15:00:59 1 decision that this court makes, I think may well have some  
15:01:03 2 impact, if it determines how to apply federal law and if it  
15:01:07 3 determines what that reasonable -- if it determines a rate for  
15:01:11 4 reasonable compensation, looking back. There are other disputes  
15:01:14 5 out there, not just here, that are raising these issues.

15:01:18 6 One last point about California, too, just to think  
15:01:21 7 about it. California invited Pac-West to come back and re-file  
15:01:26 8 their claim when they wanted to, after the D.C. Circuit issued  
15:01:31 9 their decision, or even before if it took too long. Pac-West  
15:01:35 10 declined to do that. They have not done it. So it's not the  
15:01:37 11 case that the PUC has refused to do this. They wanted some more  
15:01:40 12 guidance from the FCC, which I think they have. But Pac-West  
15:01:44 13 chose not to come back there. They chose to come here, instead.

15:01:48 14 THE COURT: Well, they're not in business anymore.

15:01:50 15 MS. TOLLER: Well, that's true.

15:01:55 16 THE COURT: All right. Within ten days, I want each  
15:01:58 17 side to give me a pleading. You can call it anything you want.  
15:02:14 18 I take it there's unanimity here that we're just dealing with the  
15:02:22 19 possible liability in the past. And I want it no more than three  
15:02:30 20 pages -- that's about my comprehension rate -- and as to why this  
15:02:39 21 can't be determined in a trial. And then, I'll look at that and  
15:02:45 22 look at these books and --

15:02:47 23 MR. TAUBE: Your Honor, if I could, I'm not sure that  
15:02:50 24 -- at least from our client's, I'm not sure that we fight that at  
15:02:54 25 all. We think it can be determined in one trial, along with the

15:02:57 1 other defendants.

15:02:59 2 THE COURT: Well, with all of the interpretations I'm  
15:03:04 3 going to have to make, and all of the federal stuff, and all of  
15:03:08 4 that stuff?

15:03:08 5 MR. TAUBE: Yes, sir.

15:03:09 6 THE COURT: Then write it in one page.

15:03:16 7 MR. TAUBE: Yes, sir. Only one sentence, your Honor.  
15:03:18 8 Thank you.

15:03:19 9 THE COURT: Okay. Motion for extension of time to file  
15:03:31 10 a brief, even though you'll see it's fully briefed, is granted.  
15:03:37 11 Joint motion to deem matter fully briefed is dismissed. I have  
15:03:43 12 no idea if it's fully briefed or not. I have a hunch that I may  
15:03:47 13 want additional briefing before I decide to take this on.

15:03:52 14 And the motion for leave to file -- exceed the page  
15:03:57 15 limits, of course, is granted. All the motions to appear pro hac  
15:04:01 16 vice are granted. Just remember one thing. I've said it many,  
15:04:07 17 many times. It doesn't really make any difference how long your  
15:04:10 18 pleading is. I only read the first twelve pages.

15:04:14 19 All right. Ten minutes and I'll be with the criminal  
15:04:17 20 docket.

21 (End of proceedings.)

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UNITED STATES DISTRICT COURT)  
WESTERN DISTRICT OF TEXAS )

I, LILY I. REZNIK, Official Court Reporter, United States District Court, Western District of Texas, do certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

I certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

WITNESS MY OFFICIAL HAND this the 24th day of October, 2013.

/S/ Lily I. Reznik  
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U.S. DISTRICT COURT, WESTERN DISTRICT OF TEXAS (AUSTIN)